

APPEAL NO. 020942  
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 19, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters from September 19, 2001, through March 19, 2002. The claimant appeals, arguing that the hearing officer erred in determining SIBs for the eighth quarter from December 19, 2001, through March 19, 2002. The file does not contain a response from the respondent (carrier). The hearing officer's determination that the claimant is not entitled to SIBs for the seventh quarter has not been appealed and has therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant's efforts constituted a good faith effort to obtain employment commensurate with her ability to work. Rule 103.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The claimant testified she performed two part-time jobs during the qualifying period for the eighth quarter of SIBs. The claimant contends that hearing officer improperly determined that she was not entitled to SIBs because she did not provide documentation to establish "what hours the claimant worked and whether she worked every week." The claimant contends that she provided sufficient evidence to show that she returned to work to a position relatively equal to her ability to work; that she was not required to look for work in each week leading up to the relatively equal employment; and that she did not need to work some minimum part of the qualifying period in dispute.

Whether the claimant returned to work in a position relatively equal to the injured employee's ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. To be relatively equal it is not required that the claimant work every week of the filing period. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer determined that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the eighth quarter of

SIBs. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true The true corporate name of the carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Roy L. Warren  
Appeals Judge